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DRAFT REPORT OF THE INTERNATIONAL LAW COMMISSION ON THE WORK OF ITS FORTY-NINTH SESSION

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CHAPTER X

OTHER DECISIONS AND CONCLUSIONS OF THE COMMISSION

CONTENTS

		Paragraphs	Page
A.	Programme, procedures and working methods of the Commission and its documentation		
B.	Appointment of Special Rapporteurs		
C.	Long-term programmes of work		
D.	Cooperation with other bodies		
E.	Date and place of the fiftieth session		
F.	Representation at the fifty-third session of the General Assembly		
G.	Contribution to the Decade of International Law		
H.	International Law Seminar		

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A. Programme, procedures and working methods of the Commission and its documentation

1. At its 2474th meeting, on 12 May, the Commission established a Planning Group for the current session. 1/ It had before it Section E of the topical summary of the discussion held in the Sixth Committee of the General Assembly during its fifty-first session entitled "General conclusions and recommendations" (A/CN.4/479).

2. At its ... th meeting, held on ..... July, the Commission considered and endorsed the repo t of the Planning Group ( ).

(a) Planning of the current session's work

3. It was noted that, currently, substantive work had already been undertaken on the following topics: Nationality in relation to the succession of States, Reservations to treaties, State responsibility and International liability for injurious consequences arising out of acts not prohibited by international law. According to paragraph 13 of General Assembly resolution 51/160, the Commission was invited further to examine the topics "Diplomatic protection" and "Unilateral acts of States", and to indicate the scope and the content of the topics in the light of the comments and observations made during the debate in the Sixth Committee and any written comments that Governments may wish to submit.

(b) Work programme of the Commission for the quinquennium

4. It was found useful for the Commission to plan its work for the ensuing five years and to prepare a work programme setting out in general terms the goals with respect to each topic concerned to be achieved during the quinquennium. It was, however, noted that such programme should allow sufficient flexibility. The Commission considered that, during the quinquennium, substantial progress should be made on those topics on which substantive work had already been undertaken, and that it would be desirable to complete, as the case may be, the first or the second reading of those topics within the present quinquennium. The Working Groups on the respective topics were thus invited to consider this matter and to make recommendations to that end. These recommendations are included in the respective Chapter on

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1/ The Group was composed of Mr. J. Baena Soares (Chairman), Mr. M. Bennouna, Mr. J. Crawford, Mr. L. Ferrari Bravo, Mr. R. Goco, Mr. Q. He, Mr. J. Illueca, Mr. J. Kateka, Mr. I. Lukashuk, Mr. V. Mikulka, Mr. D. Opertti-Badan, Mr. G. Pambou-Tchivounda, Mr. A. Pellet, Mr. B. Sepúlveda, Mr. B. Simma, Mr. D. Thiam and Mr. Z. Galicki (Ex-officio).

the topic concerned. A year-by-year listing of the plan is produced at the end of Section A.

(c) Methods of Work

5. Various aspects of the current methods of work were commented upon. It was suggested, inter alia, that debates in the Commission on the draft articles during the various stages of consideration (e.g. in the Plenary and the Drafting Committee) should be conducted in such a way so as to avoid repetition and reopening of issues already considered.

6. It was suggested that the currently fixed sequence by geographical region of the rotation system of the Chairmanship should be adjusted so as to provide the flexibility that each region could have an opportunity to assume the Chairmanship at a different year of the quinquennia. There was general support to this suggestion; a way should, however, be found to adjust the practice.

7. To enhance efficient organization of the work of the Commission, it was suggested that the membership (for the following session) of the Bureau or, at least, the Chairman, should be generally agreed upon at the end of a session rather than at the beginning of a session as has been the case.

(d) Split session for 1998

8. The question of a split session for 1998 as an experiment was discussed in the light of the factors outlined in paragraphs 228-233 of the 1996 Report of the Commission.

9. In considering a split session for 1998 as an experiment, it was recognized that the choice of dates was very much circumscribed by such external factors as availability of conference services, the holding of a Diplomatic Conference on the Establishment of an International Criminal Court (between mid-June and July in 1998), and financial constraints under which the United Nations is operating. Due to such difficulties, the only dates available in 1998 were as follows: 20 April to 12 June in Geneva; 27 July to 14 August in New York. There was a preference that the second part of its session should also be held in Geneva; it was, however, noted that the services for summary records would not be available in August in Geneva. The Commission expressed regrets about this lack of flexibility and suggested that the 1998 "experiment" could, therefore, not be made under the best conditions.

10. Recognizing that the 1998 split session would be an experiment and that its value could only be assessed after the session had been held, the Commission considered that appropriate arrangements should, however, be made by the Secretariat so as not to prejudge the outcome of the experiment.

(e) Duration of the Commission's future sessions

11. It was noted that the 10-week session in 1997 was of "an exceptional measure" taken by the Commission having in mind, inter alia, the financial difficulties under which the United Nations was operating in 1997. 2/ Having due regard to the Commission's work programme planner for the quinquennium and complexity of the topics under consideration, the Commission considers that it should have an 11-week session in 1998 and a 12-week session in 1999. The Secretariat was asked to transmit this position to the competent organs concerned.

(f) Celebration of the fiftieth anniversary of the Commission in 1998

12. The Commission took note with appreciation of the General Assembly's decision to organize a colloquium on the progressive development and codification of international law to be held in New York this Autumn. It also noted with appreciation of the offer of the Swiss Government and the Graduate Institute of International Studies (Geneva) to collaborate with the Commission in organizing a seminar in 1998 to celebrate the fiftieth anniversary of the Commission. The Commission decided that the seminar takes place on 22 and 23 April 1998. Members of the Commission were encouraged to submit their suggestions on the themes and formats of the seminar.

13. An informal discussion was held with members of the Graduate Institute. It was suggested that the theme of the seminar should be a critical evaluation of the work of the Commission and lessons learned for the future role of the Commission. Enhancing the Commission's contribution to the progressive development and codification of international law should be the goal of the seminar. A detailed plan should be developed on this basis.

2/ See Official Records of the Fifty-first Session, Supplement No. 10 (A/51/10), para. 250. The session being the first of the quinquennium, which caused a lighter agenda than usual, was also a consideration.

(g) Cooperation with other bodies

14. The Commission took note of the recommendations in this regard contained in the Commission's 1996 report (paragraphs 239-241) and considered useful to take steps to implement those recommendations. During the discussion, reference was made to the Commission's Statute which envisaged that it could conduct a range of relationships with other bodies both within and without the United Nations system. Such relationships include not only dispatching questionnaires and considering "proposals and draft multilateral conventions" submitted to the Commission from the other bodies (Article 17 of the ILC Statute), but also conducting consultations with United Nations organs "on any subject which is within the competence of that organ", and with any other organizations, intergovernmental or otherwise, national or international, on any subject entrusted to it (Articles 25 (1) and 26 (1) of the ILC Statute). It was suggested that consideration should be given to establishing such relationships. It was noted that the establishment of such relationships should be selective, developed on a case-by-case basis, and should not be disproportionate to its principal activities of progressive development in codification of international law.

15. Reference was also made to Article 26 (2) of the ILC Statute by which the Secretary-General was requested to draw up a "list of national and international organizations concerned with questions of international law". The general view was that the list currently used for activities relevant to codification of international law should be reviewed; in-active organizations should be removed; the Asian-African Legal Consultative Committee, the African Society of International Law, the Law Association for Asia and the Pacific, and other similar institutions in the field of public international law should be added to the list. Members were requested to give their comments on the list circulated. A new list should then be prepared for the purpose of distributing documents of the Commission.

Organization of the fiftieth session

16. It was suggested that in principle the first part of the session should be given to the discussion of the various reports on the topics, whereas the second part should be used for the adoption of draft articles with commentaries (with regard to reservations, State responsibility and international liability) and of the report of the Commission. Taking into account the fact that there would not be any summary records in the first week

(20-24 April) except for a first plenary meeting, it was suggested that this first week be given to working groups and to the 2-day seminar for the celebration of the fiftieth anniversary.

Work programme (1998-2001)

1998:

Nationality in relation to the succession of States

Preparation of a questionnaire to be sent to States regarding the question of the nationality of legal persons in relation to the succession of States (to be discussed mainly in a small Working Group on the basis of the report of the Special Rapporteur).

Reservations to treaties

Two reports of the Special Rapporteur: the first report will deal with the definition, the formulation and withdrawal of reservations and the acceptances and objections to reservations. The second report will deal with effects of reservations, acceptances and objections to reservations.

State responsibility

First report of the Special Rapporteur dealing with Part 1, review of the draft articles, (except Article 19: overview of issues relating to State crimes).

International Liability for injurious consequences arising out of acts not prohibited by international law

First report of the Special Rapporteur on "prevention of transboundary damage from hazardous activities".

Request for comments by Governments on "international liability" aspects of the topic.

Diplomatic Protection

First preliminary report of the Special Rapporteur on the basis of an outline proposed by the Working Group.

Unilateral acts of State

First report of the Special Rapporteur. In the preparation of that report, the Special Rapporteur might be assisted by a small consultative group of members of the Commission.

1999:

Nationality in relation to the succession of States

Possible completion of the second reading of the draft articles on nationality of natural persons in relation to the succession of States.

Reservations to treaties

Report of the Special Rapporteur on the status of reservations in the case of succession of States.

State responsibility

Second report of the Report of the Special Rapporteur on draft article 19 and on Part Two (except countermeasures).

International Liability for injurious consequences arising out of acts not prohibited by international law

Possible completion of the first reading of the draft articles on "prevention of transboundary damage from hazardous activities".

[Work on "international liability" part of the topic depending on comments by Governments.]

Diplomatic protection

Second report of the Special Rapporteur.

Unilateral Act of States

Second report of the Special Rapporteur.

2000:

Nationality in relation to the succession of States

Further work depends on comments by Governments regarding nationality of legal persons.

Reservations to treaties

Report of the Special Rapporteur on dispute settlement linked to reservations.

Possible completion of the first reading of the guide to practice in respect of reservations.

State responsibility

Third report of the Special Rapporteur. (Countermeasures and an overview of issues relating to Part Three (settlement of disputes)).

Commission may establish a Working Group on settlement of disputes.

International Liability for injurious consequences arising out of acts not prohibited by international law

Comments by Governments on draft articles on "prevention".

Diplomatic protection

Third report of the Special Rapporteur.

Unilateral Act of States

Third report of the Special Rapporteur.

2001:

State responsibility

Fourth report of the Special Rapporteur (Part Three; any other outstanding issues).

Adoption of draft articles on second reading and commentaries thereto, and of the Commission's resolution on the draft articles.

Reservations to treaties

Completion of first reading of the draft articles.

Diplomatic Protection

Possible completion of the first reading of the topic.

Unilateral acts of States

Possible completion of work on the topic and submission of conclusions and recommendations to the Fifty-sixth session of the General Assembly.

International Liability for injurious consequences arising out of acts not prohibited by international law

Possible completion of second reading of draft articles on "prevention".

B. Appointment of Special Rapporteurs

17. At its 2510th meeting held on 11 July, on the recommendation of the Bureau, the Commission appointed the following as Special Rapporteur for the topic indicated:

State responsibility	Mr. J. Crawford
International Liability for Injurious Consequences Arising Out of Acts Not Prohibited by International Law: under the subtitle "prevention of transboundary damage frcm hazardous activities"	Mr. P.S. Rao
Diplomatic protection	Mr. M. Bennouna
Unilateral Act of States	Mr. V. Rodriguez Cedeño

18. It was understood that Mr. P.S. Rao will deal only with the prevention aspects of the topic as set out in the decision of the Commission (see paragraph ...).

19. Before the Special Rapporteurs were appointed, the Chairman referred specifically to the guidelines set out in the Commission's 1996 report regarding the role and functions of Special Rapporteurs: a standing consultative Group (paragraphs 192-195); preparation of commentaries to draft articles (paragraphs 197-200); and the Special Rapporteur's role within the Drafting Committee (paragraphs 201-202).

20. The Special Rapporteurs were called upon to form, as the case may be, their respective consultative Groups and to inform the Secretariat of their compositions.

C. Long-term programmes of work

21. The Planning Group established a Working Group to consider topics which may be taken up by the Commission beyond the present quinquennium. The Working Group on Long-Term Programmes of Work submitted its report (ILC)(XLIX/WG/LTPW.4), which was endorsed by the Planning Group. The Working Group recommended that the selection of topics for the long-term programmes should be guided by the following criteria which were identified by the Group: that the topic should reflect the requirements of States in respect of the progressive development and codification of international law; that the topic is sufficiently advanced in stage in terms of State practice to permit progressive development and codification; that the topic is concrete and feasible for progressive development and codification. In this regard, in the section of new topics, the Commission should not restrict itself to traditional topics, but could also consider those that reflect new developments in international law and pressing concerns of the international community as a whole. On this basis, the selection of topics would then be made at the Commission's fiftieth session. A process for the selection of topics within the Commission was outlined. 3/ The selected topics will then be presented to the General Assembly at its fifty-third session in 1998 with an indication of how the Commission intends to proceed with the study of each topic. The role of the General Assembly in the selection of topics was stressed.

3/ See document ILC(XLIX)/WG/LTPW/4, paragraph 4.

D. Cooperation with other bodies

22. At its 2490th meeting, held on 13 June 1997, Mr. Zelada Castedo, observer for the Inter-American Juridical Committee (IAJC), informed the Commission of the Committee's current programme of work. The IAJC had prepared a study on the right to information, with particular reference to access to and protection of personal information and data. Work had also been carried out on the development of the most-favoured-nation clauses. Other work involved an inter-American convention to regulate cooperation between American States in combating corruption in public offices. The IAJC was particularly interested in exchanging information with the Commission regarding its past experience in preparing the draft articles on the most-favoured-nation clauses.

23. At its 2491st meeting, held on 30 June 1997, Ms. Marta Requena, Observer for the European Committee on Legal Cooperation (CDCJ) and the Committee of Legal Advisers on Public International Law (CAHDI) informed the Commission of the Committee's work and activities. The CAHDI had given consideration to the law and practice relating to reservations to treaties and that it took account of the International Law Commission's work on the subject - particularly the questionnaire circulated by the Special Rapporteur. The CAHDI was also currently engaged in the collection and dissemination of documents concerning State practice with respect to State succession and the question of recognition, focusing on the period 1989-1994. A Multidisciplinary Group on Corruption had drawn up a Programme of Action against Corruption and considered in 1996 a preliminary draft framework convention on the subject.

24. At its 2494th meeting, held on 23 June 1997, Mr. Tang Chengyuan, Secretary-General of the Asian-African Legal Consultative Committee (AALCC) informed the Commission that the AALCC planned to convene in 1998, a special meeting on reservations to the law of treaties. The AALCC had considered various topics on the Commission's agenda including the framework convention on the law of non-navigational uses of international watercourses and the question of the establishment of an international criminal court. The AALCC had also drawn its members' attention to the Commission's draft articles on the draft Code of Crimes against the peace and security of mankind. In addition, the AALCC had considered a new item, namely, the extraterritorial application of national laws: sanctions imposed against third parties.

25. At its 2503rd meeting, held on 2 July 1997, Judge Jiuyong Shi, representing Judge Steven Schwebel, President of the International Court of Justice, informed the Commission of the Court's recent activities and of the cases currently before its docket. Judge Shi paid tribute to the significant contributions made by the Commission. It was noted that the draft articles and reports prepared by the Commission were treated by the Court as sources which were treated at least as authoritative as writings of the most eminent publicist of international law. In its decisions, the Court often referred to the draft articles formulated by the Commission and to the commentaries to the draft articles, sometimes even to the reports and summary records of the Commission. An exchange of views followed. To establish a dialogue with the Court was considered very useful for the Commission. This initiative should be continued.

26. On 9 July an informal exchange of views on various aspects of international humanitarian law was held between members of the Commission, members of the Secretariat of the International Committee of the Red Cross, and the representative of the International Federation of Red Cross and Red Crescent Societies.

E. Date and place of the fiftieth session

27. On the basis of those external factors mentioned above, the Commission agreed that its next session be held at the United Nations Office at Geneva from 20 April to 12 June 1998 and at the United Nations Headquarters at New York from 27 July to 14 August 1998 (see Section A (d) above).

F. Representation at the fifty-third session of the General Assembly

28. The Commission decided that it should be represented at the fifty-third session of the General Assembly by its Chairman, Mr. Alain Pellet. 4/

G. Contribution to the Decade of International Law

29. Pursuant to its decision, the Commission published in April 1997 a collection of essays by members of the Commission, entitled "International Law on the Eve of the Twenty-first Century: Views from the International Law Commission". This publication was intended as a contribution to the

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4/ At its 2513rd meeting, held on 15 July, the Commission requested Mr. V. Mikulka, Special Rapporteur on Nationality in Relation to the Succession of States to attend the fifty-third session of the General Assembly under the terms of General Assembly resolution 35/44.

United Nations Decade of International Law (1989-1999). This publication also coincided with the fiftieth anniversary of the Commission. The collection contains 20 essays, either in English or French, by members or the Commission, an introduction on the achievement of the International Law Commission by the Secretariat, a preface by the Secretary-General and a foreword by Mr. A. Pellet, Chairman of the Commission's Working Group on its contribution to the United Nations Decade of International Law.

H. International Law Seminar

30. Pursuant to General Assembly resolution 51/160 the thirty-third session of the International Law Seminar was held at the Palais des Nations from 16 June to 4 July 1997, during the forty-ninth session of the Commission. The Seminar is for advanced students specializing in international law and for young professors or government officials intended for an academic or diplomatic career or posts in the civil service in their country.

31. Twenty-two participants of different nationalities, mostly from developing countries, took part in the session. 5/ The participants in the Seminar attended meetings of the Commission and heard specially arranged lectures.

32. The Seminar was opened by the Commission's Second Vice-Chairman, Mr. Peter Kabatsi. Mr. Ulrich von Blumenthal, Senior Legal Officer of the United Nations Office at Geneva, was responsible for the administration and organization of the Seminar.

33. The following lectures were given by members of the Commission:

5/ The following persons participated in the thirty-third session of the International Law Seminar: Mr. Ephraim Aberra Jimma (Ethiopia); Ms. Roselyne Allemand (France); Mr. Alfonso Ascencio-Herrera (Mexico); Mr. Bayarmunkh Chuluuny (Mongolia); Ms. Viviane Contin-Williams (Argentina); Mr. Carlos Diaz (Costa Rica); Ms. Kadiatou Doukouré (Guinea); Mr. Christophe Eick (Germany); Mr. Murad Karriyev (Turkmenistan); Ms. Ketrah Katunguka (Uganda); Ms. Dinara Kemelova (Kyrgyzstan); Mr. Konstantinos Magliveras (Greece); Ms. Sari Mäkelä (Finland); Mr. Bugalo Maripe (Botswana); Ms. Yolanda Membreño (Honduras); Mr. Blé Simplice Polri (Côte d'Ivoire); Ms. Jani Purnawanty (Indonesia); Ms. Alejandra Quezada Apablaza (Chile); Mr. Hugo Ruiz Diaz Balbuena (Paraguay); Ms. Nazee Shahzadi (Pakistan); Mr. Shaplee Rohimi (Malaysia) and Mr. Xiaodong Yang (China). Due to unforeseen circumstances, two additional selected candidates from Bangladesh and Liberia were unable to attend. A Selection Committee, under the Chairmanship of Professor Nguyen-Huu Tru (Honorary Professor, Graduate Institute of International Relations, Geneva), met on 11 April 1997 and, after considering some 110 applications for participation in the Seminar, selected 24 of the candidates.

Mr. Alain Pellet: "The work of the International Law Commission"; Mr. Raul Goco: "International law implications on the recovery of ill-received funds"; Mr. Vaclav Mikulka: "State succession and its impact on the nationality of natural and legal persons"; Messrs. Gerhard Hafner and Victor Rodriguez Cedeño: "The establishment of the International Criminal Court"; Mr. Robert Rosenstock: "The law of the non-navigational uses of international watercourses"; Mr. Ian Brownlie: "Dispute settlement"; Mr. Enrique Candioti: "Unilateral acts of States"; and Mr. Bruno Simma: "International law and human rights in the work of the United Nations".

34. Lectures were also given by Mr. Roy S. Lee, Director, Codification Division, Office of Legal Affairs and Secretary to the International Law Commission: "The process of international law making"; Ms. Erika Feller, Deputy-Director, Division of International Protection, United Nations High Commissioner for Refugees: "The protection mandate of UNHCR"; Mr. William Davey, Director, Legal Affairs Division, World Trade Organization: "The WTO machinery for trade dispute settlement"; and Ms. Claude Roberge, Advocate, Legal Division, International Committee of the Red Cross: "The ICRC and international penal repression of violations of international humanitarian law".

35. Participants were also given the opportunity to make use of the facilities of the United Nations Library and of the UNHCR Visitors' Centre, to view training videos on international law, and to visit the Museum of the ICRC.

36. The Republic and Canton of Geneva offered its traditional hospitality to the participants after a guided visit of the Alabama and Grand Council Rooms.

37. Mr. Alain Pellet, Chairman of the Commission, Mr. Ulrich von Blumenthal, on behalf of the United Nations Office at Geneva, and Ms. Kadiatou Doukouré, on behalf of the participants, addressed the Commission and the participants at the close of the Seminar, which coincided with the visit of the Secretary-General of the United Nations to the Commission. On this occasion, participants engaged in a dialogue with the Commission on its work. Each participant was presented with a certificate attesting to his or her participation in the thirty-third session of the Seminar.

38. The Commission noted with particular appreciation that the Governments of Cyprus, Denmark, Finland, Germany, Iceland, Norway and Switzerland had made voluntary contributions to the United Nations Trust Fund for the International

Law Seminar. Thanks to those contributions, it was possible to award a sufficient number of fellowships to achieve adequate geographical distribution of participants and to bring from developing countries deserving candidates who would otherwise have been prevented from taking part in the session. This year, full fellowships (travel and subsistence allowance) were awarded to 18 candidates and partial fellowship (subsistence only) to 1 candidate.

39. Of the 736 participants, representing 142 nationalities, who have taken part in the Seminar since 1965, the year of its inception, 387 have received a fellowship.

40. The Commission stresses the importance it attaches to the sessions of the Seminar, which enables young lawyers, especially those from developing countries, to familiarize themselves with the work of the Commission and the activities of the many international organizations which have their headquarters in Geneva. The Commission recommends that the General Assembly should again appeal to States to make voluntary contributions in order to secure the holding of the Seminar in 1998 with as broad a participation as possible.

41. The Commission noted with satisfaction that in 1997 comprehensive interpretation services were made available to the Seminar. It expresses the hope that the same services will be provided for the Seminar at the next session, despite existing financial constraints.